

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>William Moviel,</b>	)	<b>CASE NO. 1:08 CV 1612</b>
	)	
<b>Petitioner,</b>	)	<b>JUDGE PATRICIA A. GAUGHAN</b>
	)	
<b>vs.</b>	)	
	)	
<b>Clifford Smith,</b>	)	<b><u>Memorandum of Opinion and Order</u></b>
	)	
<b>Respondent.</b>	)	

This matter is before the Court upon the Report and Recommendation of Magistrate Judge Gallas (Doc. 8) which recommends denial and dismissal of the Petition for Writ of Habeas Corpus pending before the Court. For the following reasons, the Report and Recommendation is ACCEPTED.

**Introduction**

Petitioner, William Moviel, commenced this action with the filing of a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. The Magistrate Judge issued his Report and Recommendation recommending that the Petition be denied. Petitioner filed Objections to the Report and Recommendation.

### **Standard of Review**

Rule 8(b) of the Rules Governing Section 2254 Cases in the United States District Courts provides, “The judge must determine *de novo* any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any proposed finding or recommendation.”

### **Discussion**

Petitioner plead guilty in February 2005 to charges related to use of a minor in nudity-oriented material, disseminating obscene material to minors, and gross sexual imposition. Upon re-sentencing, petitioner was sentenced to eight years incarceration and adjudicated a sexual predator. Petitioner sets forth five grounds for habeas relief. The Magistrate Judge concluded that none warrants granting the writ. For the following reasons, this Court agrees.

Ground One asserts that neither counsel nor the trial court properly advised petitioner as to the nature of his pleas, and that his request to withdraw the pleas was arbitrarily denied. Generally, petitioner was indicted for a felony of the third degree although his victims were 15 years of age and not under thirteen which younger age requires that the offense level increase from a four to a three. Petitioner, however, plead guilty to two fourth degree felonies. Ground Two also challenges the denial of his request to withdraw his guilty plea. The state courts found that the guilty plea was voluntary and knowing. The Magistrate Judge concluded that the state appellate court’s decision that counsel’s performance was not deficient and that the trial court did not improperly advise petitioner was neither contrary to nor an unreasonable application of clearly established law. The issue regarding withdrawal of the plea was found to be only a matter of state procedure. In general, the objections present the same arguments made to and

rejected by the Magistrate Judge. The Court finds no other reason to alter the findings made in the Report and Recommendation. As the Court agrees with the Magistrate Judge's findings and conclusions, they are incorporated herein by reference.

Grounds Three and Four challenge petitioner's sentence. Again, the Magistrate Judge did not find the state court conclusions to be contrary to or an unreasonable application of federal law. Petitioner's arguments to the contrary do not demonstrate that these findings should be disturbed.

Ground Five relates to petitioner's adjudication as a sexual predator. The Magistrate Judge determined that the issue is not cognizable on habeas review and that petitioner is not "in custody" due to the adjudication that he is a sexual predator as required by the habeas statute. This Court agrees given that precedent within this Circuit concludes that, even if the petitioner is currently incarcerated, a challenge of this nature fails to satisfy the "in custody" requirement necessary to obtain habeas relief. *See, for e.g., Ratliff v. Jefferys*, 2007 WL 4248173 (N.D. Ohio Nov. 30, 2007).

For these reasons, and those stated in the Report and Recommendation which is fully incorporated herein by reference, the claims for relief fail.

### **Conclusion**

Accordingly, the Report and Recommendation is accepted. The Petition for Writ of Habeas Corpus is dismissed. Furthermore, for the reasons stated herein and in the Report and Recommendation, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed.R.App.P. 22(b).

IT IS SO ORDERED.

/s/ Patricia A. Gaughan

PATRICIA A. GAUGHAN  
United States District Judge

Dated: 1/12/10